

On December 9, 2004, Petitioner Hatcher dated his *pro se* habeas corpus petition, and submitted it to this court. In his petition, Petitioner states claims relating to his state court convictions, including (1) breach of a plea agreement that his state sentence would be made to run concurrently with a federal sentence yet to be imposed, (2) an alleged unknowing and unintelligent guilty plea, and (3) ineffective assistance of counsel. The State has responded to the petition and moved to dismiss on grounds that the petition is time-barred under the one-year statute of limitations applicable to federal habeas cases.

On review of the record in this case, it is apparent that the State's limitations defense is well-taken, and that the petition herein must be dismissed as time-barred. Petitioner pled guilty on August 27, 1998. He had a limited right of appeal under state law, but that right expired on September 5, 1998, 10 days after judgment. *See* N.C. Gen. Stat. § 15A-1444(a1) *et seq.* (1999); N.C.R. of App. P., Rule 4(a) (2001). Accordingly, his conviction became final for purposes of final review no later than September 5, 1998.

The one-year statute of limitations on habeas actions, 28 U.S.C. § 2244(d)(1), began to run against Petitioner on September 6, 1998 and fully expired one year later, on September 6, 1999. Petitioner filed no MAR in state court until December 5, 2003, long after expiration of the limitations period, and too late to have any tolling effect on the running of the statute. *See* 28 U.S.C. § 2244(d)(2). Petitioner's claims to this court include an allegation that he believed (and was promised in a plea agreement) that his subsequent federal sentence in certain criminal proceedings would be made to run concurrently with his

state sentence. Instead, on August 5, 1999, the federal court entered a final sentence in the presence of Petitioner and ordered the federal sentence to run consecutively to Petitioner's state sentence. It may be that Petitioner could not have known the "factual predicate" for his habeas claims until the day of his federal sentencing and, thus, the habeas statute of limitations, pursuant to 28 U.S.C. § 2244(d)(1)(D), did not begin to run against Petitioner until August 5, 1999. Nonetheless, even under this analysis, the limitations period expired on August 5, 2000, several years before Petitioner filed either his petition herein or a state court MAR that could have served to toll the statute.

The State's statute of limitations defense is established as a matter of law on the record before the court. The petition should be dismissed.

Conclusion

For reasons set forth above, **IT IS RECOMMENDED** that Respondent's motion to dismiss Petitioner's habeas corpus petition as time-barred be granted and that this action be dismissed with prejudice.

/s/ P. Trevor Sharp
United States Magistrate Judge

Date: June 22, 2005